Supreme Court, U.S.
FILED

No. 01 489 SEP 17 2001

IN THE

SUPREME COURT OF THE UNITED STATES

RANDALL G. STEPHENS,

Petitioner,

v.

KENNETH S. APFEL,

COMMISSIONER OF SOCIAL SECURITY,

Respondent.

PETITION FOR WRIT OF MANDAMUS

RANDALL G. STEPHENS,

PETITIONER PRO SE

3434 EAST 117TH STREET

CLEVELAND, OHIO 44120-4308

(216) 491-8566

Randall G. Stephens, petitioner herein petitions this Court to issue a writ of mandamus, directed to the Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, and shows as follows:

QUESTIONS PRESENTED

Whether the Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, has the power to deprive petitioner of the Equal Protection of the Fourteenth Amendment of the United States Constitution?

Whether this Court should exercise its jurisdiction to compel the Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, to reinstate and docket petitioner's case by issuance of a writ of mandamus?

PARTIES

Randall G. Stephens, is a Black male of African ancestry, Born August 7, 1951 at 10:15 A. M., in the United States of America, State of Ohio, County of Cuyahoga and City of Cleveland. A registered voter, meeting all qualifications as being a bona fide citizen of this country.

Kenneth S. Apfel, is the Commissioner of the Administration Department of the Social Security Agency, his business office is located in Room 611 Altmeyer Building, 6401 Security Boulevard Baltimore, Maryland 21235.

Janice E. Yates, is the Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, her business office is located at 100 East Fifth Street, in Room 532 Potter Stewart U. S. Courthouse Cincinnati, Ohio 45202-3988.

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Exhibit (A) Order of District Court Dated July 20, 1984

Exhibit (B) Acknowledgment of Appellant's Brief

Exhibit (C) Letter Requesting Stamped file copy of Motion

Exhibit (D) Stamped file copy of Motion to Reinstate

TABLE OF AUTHORITIES

I. Blake v. McClung, (1899) 175 US 114, 44 L Ed 94, 20 S Ct 42.

II. United States v. Haley, (1962) 371 US 18, 9 L Ed 2d 1, 83 S Ct 11.

III. Connor v. Coleman, (1979) 440 US 612, 59 L Ed 2d 619 99 S Ct 1523.

IV. Mary J. Kenney Plaintiff v. Margaret M. Heckler Secretary of Health and Human Services, Case No. C82-722V United States District Court Northern District of Ohio Ed. October 14, 1983.

V. Graham v. Norton, 15 Wall, 427.

ORDER OF JUDGE BELOW

The Order of the Honorable John M. Manos, Judge of the United States District Court for the Northern District of Ohio Eastern Division, dated July 20, 1984 and unreported.

JURISDICTION

Title 28 U. S. C. Section 1651(a), provides the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

BASIS OF DISTRICT COURT'S JURISDICTION

Jurisdiction is found at Title 42 U. S. C. Section 405(g), 421(d) and Federal Rule of Civil Procedure 8(a), provides any individual, after any final decision of the Secretary

made after a hearing to which she or he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him or her of notice of such decision. Such action shall be brought in the District Court of the United States for the judicial district in which the plaintiff resides.

CONSTITUTIONAL PROVISIONS

Article III of the Constitution of the United States Section 2[1] provides the Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Controversies to which the United States

shall be a Party; - Controversies between two or more States; - between State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

This case also involves Section 1 of the Fourteenth Amendment of the Constitution of the United States. Said Section reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This petition is filed pursuant to the authority to issue extraordinary writs vested in this Court by the provisions of Section 1651(a), Title 28 United States Code, and Rule 20 of this Court, in order to prevent any further delay by the Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit Janice E. Yates, and the Commissioner of the Department of Social Security Agency Kenneth S. Apfel, in the case of Randall G. Stephens v. Commissioner of Social Security, being a Civil Action No. C83-2924 of said District Court, pending before the United States Court of Appeals for the Sixth Circuit, since May 2, 1997 for a final judicial review.

May 20, 1997 Stephens, filed a motion to restate his case for it to be reviewed by a judge to determine whether his case will be reinstated. After his case had been dismissed for failure to prosecute for a year and a half, due to his dad's illness and his own hospitalization from a Industrial injury which has left him permanently and totally disabled.

Stephens, initial review before the United States Court of Appeals for the Sixth Circuit, is to resolve the issue of whether Stephens' abrupt and arbitrary termination of his Social Security Disability Benefits, is proper or improper, which review was Ordered by the Honorable John M. Manos, Judge of the United States District Court for the Northern District of Ohio Eastern Division, on July 20, 1984.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

These issues involved in the present proceedings are of exceptional character and of great public importance. The clerks office has denied reinstating and docketing Stephens' case for four (4), years. If this can be done then all Industrial injured citizen of the United States can be denied their Social Security Disability Benefits. This refusal of reinstating and docketing is a denial of a citizen's rights under the Equal Protection of the Fourteenth Amendment. Therefore these issues are of great Constitutional importance.

The relief sought is not available, and there is no adequate remedy, in the United States Court of Appeals for the Sixth Circuit or any other Court other than this Court, for the following reasons:

This case is on appeal from a Order of the Honorable John M. Manos, United States District Judge for the Northern District of Ohio Eastern Division. See exhibit marked (A), which is now before the United States Court of Appeals for the Sixth Circuit, for the final review on the judicial level for a decision of the abrupt and arbitrary termination of Stephens' Social Security Disability Benefits, which disability is caused by a Industrial injury which has left him permanently and totally disabled.

Supporting and factual case law for the allowance of this writ are as follows:

In the case of Mary J. Kenney Plaintiff v. Margaret M. Heckler Secretary of Health and Human Services, District Judge Krenzler, Memorandum of Opinion and Order state that a final decision denying Social Security Disability

Benefits may not be dismissed for failure of Plaintiff to prosecute when Plaintiff fails to file a summary judgment as requested.

In the present case before this Court Stephens, did not just abandon his case or his duties but has legitimate reasons pursuant to 20 Civil Federal Rule Section 404.911(b)(1), providing when one is seriously ill and 20 Civil Rule Section 404.911(b)(2), providing when death or serious illness occur in the immediate family. These two (2), statutes directly apply to Stephens' case and acknowledged by the clerk's office of the United States Court of Appeals for the Sixth Circuit, as shown by exhibit marked (B).

In the case of Verna Coleman Plaintiff v. Margaret M. Heckler, Secretary of the Health and Human Services,

Defendant. Plaintiff was ordered and informed of the rules but failed to respond, The Order of District Judge Bua, stated that dismissal of her case, however, would be too severe a sanction. Accordingly, plaintiff will be allowed to proceed on her initial complaint. Therefore by law Stephens' case which is before this Court should be reinstated and docketed so that the issue of whether Stephens' abrupt and arbitrary termination of his Social Security Disability Benefits is proper or improper. This is required by the Equal Protection Laws and the Fourteenth Amendment of the United States Constitution.

In the case of Blake v. Mclung, (1899) 175 US 114, 44 L Ed 94, 20 S Ct 42, at page 118 the third paragraph which states as follows:

By the thirteenth section of the judiciary act of

September 24, 1789, c 20, 1 Stat. 81, this Court was clothed with the power to issue "writ of mandamus in cases warranted by the principles and usages of law, to any Courts appointed to persons holding office, under the authority of the United States;" and this was carried forward into section 688 of the Revised Statutes. And it was ruled in Graham v. Norton, 15 Wall, 427, that 'this express authority to issue writs of mandamus to National Courts and Officers has always been held to exclude authority to issue these writs to State Courts and Officers;" exception "where they have been issued as process to enforce judgments." In Stephens' case a issues of a writ of mandamus is needed to aid in the final judicial review level to enforce the Honorable John M. Manos, United States District Judge for the Northern District of Ohio Eastern Division, Order dated July 20, 1984.

In the case of Connor et al., v. Coleman, Judge, United States Court of Appeals, et al., (1979) 440 US 612, 59 L Ed 2d 619, 99 S Ct 1523, at page 619 first paragraph reads as follows:

"The District Court thereupon held the required hearing and entered a judgment adopting a final plan."

In Stephens' case which is now before this Court, the Order of the Honorable John M. Manos, United States District Judge for the Northern District of Ohio Eastern Division entered the final plan to resolve the issue of whether Stephens' Social Security Disability Benefits, which were abruptly and arbitrarily terminated is proper or improper.

The Connor, case further stated at page 623 the last paragraph reads as follows:

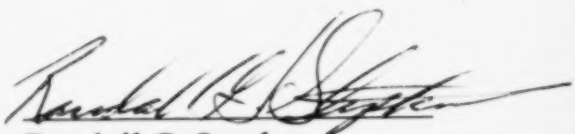
"Such intransigence, particularly after thirteen (13), years of malfeasance, warrants extraordinary sanctions. As we have previously held: Accord, United States v. Haley, 371 US 18 (1962). The petition should be granted and mandamus should issue forthwith."

It is evident that the Honorable John M. Manos, Judge of the United States District Court for the Northern District of Ohio Eastern Division, Order of July 20, 1984 can not be completed unless Stephens' case is reinstated and docketed for the final judicial review. The evidence further shows without shadow of doubt that Stephens' first requested that his case be reinstated and docketed on or about May 20, 1997. It is now four (4), years and three (3), months later, this alone shows exceptional circumstances. Finally, Stephens has been without his Social Security Disability Benefits for seventeen (17), years which warrants the

exercise of this Court's discretionary power in granting Stephens request for writ of mandamus. When this case is applied under the Equal Protection of the Fourteenth Amendment of the United States Constitution.

August 30, 2001 A. D.

Respectfully submitted by,



Randall G. Stephens,

Petitioner Pro se

3434 East 117th. Street

Cleveland, Ohio 44120-4308

(216) 491-8566

APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

RANDALL G. STEPHENS, Plaintiff,	)	CASE NO. C83-2924
v.	)	Judge John M. Manos
MARGARET M. HECKLER, Defendant.	)	ORDER

Pursuant to the Memorandum of Opinion captioned "In re Social Security Disability Termination Cases," this case is remanded to the Secretary for: (1) immediate reinstatement of prospective benefits, and (2) reconsideration of the termination decision in light of Haynes v. Secretary of Health and Human Services, _ F. 2d _, No. 82-1551 (6th Cir. May 14, 1984).

EXHIBIT MARKED (A) page 1 of 2 pages

If the termination is found to have been proper, the plaintiff shall have the right to appeal to the next appropriate administrative or judicial level. The continuation of benefits pending appeal shall be governed by the statutes and regulations governing that state of the review process. If the termination is found to have been improper, the plaintiff shall be awarded the appropriate retroactive benefits immediately.

IT IS SO ORDERED.

_____

UNITD STATES DISTRICT JUDGE

EXHIBIT MARKED (A) page 2 of 2 pages

UNITED STATED COURT OF APPEALS

FOR THE SIXTH CIRCUIT

U. S. POST OFFICE & COURTHOUSE BUILDING

CINCINNATI, OHIO 45202-3988

May 2, 1997

Randall G. Stephens

3434 East 117th Street

Cleveland, OH 44120-4308

Re: No. 95-4083

Stephens v. Comm'r of Social Security

Dear Mr. Stephens,

The clerk's office received your brief with a letter saying it was late because of your dad's illness and your own hospitalization. "Late" is an understatement, since the

appeal was dismissed a year and a half ago.

This letter lacked specifics, though, to explain why these two events created such an extensive delay. Please send some additional information to the clerk's office and it, the letter and the brief will be reviewed by a judge to determine whether the appeal will be reinstated. It would be helpful if the additional information was received within the next three weeks.

Sincerely yours,

Janice E. Yates

Chief Deputy Clerk

EXHIBIT MARKED (B) 2 of 2 pages

Randall G. Stephens

3434 East 117th Street

Cleveland, Ohio 44120-4308

Re: No. 95-4083

Stephens v. Comm'r of Social Security

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 East Fifth Street, Room 532

Potter Stewart U. S. Courthouse

Cincinnati, Ohio 45202-3988

Attention: Chief Deputy Clerk Janice E. Yates

May 20, 1997

Dear Chief Deputy Clerk Yates:

EXHIBIT MARKED (C) page 1 of 2 pages

Enclosed please find the original foregoing Motion To Reinstate and one copy in the above caption action.

Please file the original with the court and stamp file the copy and return to me at the above address.

Thank you for your assistance in this matter.

Sincerely,

Randall G. Stephens

EXHIBIT MARKED (C) page 2 of 2 pages

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS	)	CASE NUMBER 95-4083
	)	
PLAINTIFF - APPELLANT	)	
	)	
v.	)	
	)	
COMMISSIONER OF SOCIAL SECURITY	)	MOTION
	)	
DEFENDANT - APPELLEE	)	TO REINSTATE

MOTION

Now comes Plaintiff - Appellant Randall G. Stephens, and respectfully moves this Honorable Court to reinstate the above caption case for the following reasons:

In the case of Mary J. Kenney Plaintiff v. Margaret M. Heckler Secretary of Health and Human Services No. C82-7222V. United States District Court N. D. Ohio Ed. Oct. 14, 1983.

EXHIBIT MARKED (D) page1 of 2 pages

District Judge Krenzler, Memorandum of Opinion and Order states that a final decision denying Social Security Disability Benefits may not be Dismissed for Failure of Plaintiff to Prosecute when Plaintiff fails to file a summary judgment as requested.

In the Case of Verna Coleman Plaintiff v. Margaret M. Heckler, Secretary of Health and Human Services, Defendant. Plaintiff was ordered and informed of the rules but failed to respond. The Order of District Judge Bua, stated that dismissal of her case, however, would be too severe a sanction. Accordingly, plaintiff will be allowed to proceed on her initial complaint.